

Application No. 10/644550
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Amendment After Final and Request For Reconsideration
Attorney Docket No. S63.2H-12015-US01

Remarks

This Amendment is in response to the Final Office Action dated July 17, 2006. The Office Action: 1) rejected claim 5 under 35 USC §102(e) as being anticipated by US 5,676,697 (hereinafter McDonald), 2) rejected claims 19, 20, 23, and 24 under 35 USC §102(e) as being anticipated by US 6,692,483 hereinafter (Vardi), 3) rejected claim 26 under 35 USC §102(e) as being anticipated by Vardi, and 4) objected to claim 6 but stated that it would be allowable if re-written in independent format. The following comments are presented in the same order as in the Office Action with section numbers corresponding to the above enumeration.

1. 35 USC §102(e) Rejection of claim 5 by McDonald

The Office Action rejected claim 5 under 35 USC §102(e) as being anticipated by McDonald. Specifically the Office Action stated that the bifurcated stent described in McDonald when in the first configuration has a branch portion flush with the tubular body. This is incorrect. As illustrated in FIGs. 11, 13, and 14, when in the first configuration the branch portion of McDonald is not flush with the tubular body. Instead the branch portion is an oval shaped coil wrapped around and above the tubular body. McDonald, Col. 12 lines 12-19 and lines 35-38. Positioning of the branch portion above the tubular body does not match the definition of the term “flush” that is provided in the specification.

The specification illustrates the term “flush” in Applicant’s FIG. 6. (¶ [0048] lines 12-16 in published application US 2004/0138737A1) and states that flush means it is disposed within the volume defined by the tubular body and does not protrude radially from the tubular body. Id. lines 7-10. This specific definition should be used to construe the term “flush” in the claims because an applicant is entitled to be his or her own lexicographer (*See In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671 as well as MPEP § 2173.05(b)). The applicant’s definition of a term is proper because the specification is what gives meaningful notice to the public, unlike dictionaries which instead have multiple meanings and which may not provide clear or consistent meaning to the claims. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005). Because McDonald does not disclose a flush branch portion, it does not anticipate claim 5.

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2. 35 USC §102(e) Rejection of claims 19, 20, 23, and 24 by Vardi

The Office Action rejected claims 19, 20, 23, and 24, under 35 USC §102(e) as being anticipated by Vardi. This rejection is incorrect as base claim 19 contains structural limitations not present in Vardi. Claim 19 describes the expandable branch structure as having a first ring connected to and concentric with a second ring. "Concentric" means circles or rings which share a common center. *Merriam-Webster's Medical Dictionary, 2002 Edition, via dictionary.com*. No where in Vardi is there any discussion or even a suggestion of an expandable branch structure having two or more interconnected rings which share a common center. In fact, the portion of Vardi cited in the Office Action only discloses that the branch portion is radially expandable (Vardi, Col. 7 lines 11-25). Similarly, the figure (Vardi, FIG. 10) associated with the description in Vardi shows no details as to the structure or arrangement of such a branch portion. For the same reason, claims 20, 23, and, 24 which depend from claim 19 are also not anticipated by Vardi.

3. 35 USC §102(e) Rejection of claim 26 by Vardi

The Office Action also rejected claim 26 under 35 USC §102(e) as being anticipated by Vardi. This rejection however is incorrect as well because claim 26 also contains structural limitations not present in Vardi. Claim 26 describes tubular walls made up of coiled struts which have connections between the individual coiled struts that are capable of expansion in a direction orthogonal to the diameter of the tubular body. No where in Vardi is this limitation of claim 26 disclosed or even suggested.

4. Objection to allowable claim 6

The Office Action stated that claim 6 would be allowable if re-written to be independent of claim 5. As previously mentioned, Applicant disputes the validity of the rejection of claim 5. Despite this dispute however, in order to facilitate the prosecution of this application Applicant has amended claim 6 to be in independent format.

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Conclusion

Based on at least the foregoing remarks, Applicant respectfully submits this application is in condition for allowance. Withdrawal of the rejections against Claims 5, 19, 20, 23, and 26 and the objection against claim 6 is requested. Favorable consideration and prompt allowance these claims are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in better condition for allowance, Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

Date: August 31, 2006

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